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SUBJECT: Discussions continue on appointment of a Chief Justice

¶1. (U) Summary: The National Association of Haitian Magistrates (ANAMAH) has called on President Rene Preval to appoint a Chief Justice of the Supreme Court, a position that has been vacant since 2004. Without a Chief Justice, the 2007 legislation that created an independent judiciary cannot be implemented. Minister of Justice Paul Denis defended the Executive and responded that appointment of a Chief Justice is mired in a broader issue - that of filling several vacancies on the 12-member Supreme Court and the lack of sufficient nominees from the Senate. Now that Preval has greater influence in the Senate, we may see movement in 2010 to replace the current ineffective court. End summary.

Judges meet and demand appointment of a Chief Justice

¶2. (U) The National Association of Haitian Magistrates (ANAMAH) met on December 17 -18 in Port-au-Prince for its 14th annual congress, and pressed for the Executive's appointment of a Chief Justice of the Supreme Court. ANAMAH adopted a resolution that called upon the Preval government to fill the position in order to implement the 2007 law that reorganized the Haitian judicial system and established an independent judiciary. AMANAH also demanded that the Executive pay all past-due salaries for judges. ANAMAH members are comprised of judges and justices of the peace from all levels of the Haiti judicial system.

Appointment of a Chief Justice necessary for judicial reforms adopted in 2007

¶3. (U) The action by ANAMAH stems from two years of inactivity by the Executive in implementing the watershed judicial reform law, adopted by Parliament in 2007. A key feature of the legislation was the establishment of an independent judiciary which, at the present, continues to be governed by the Executive's Ministry of Justice. With the goal of judicial independence, the 2007 law established the Superior Judicial Council (CSPJ) to govern and administer the court system and discipline its judges, and a School of Magistrates to train and certify judges. Under the new law, both of these entities are to be headed by the Chief Justice of the Supreme Court, a position that must be filled in order for the new bodies to be empowered. However, despite consistent pressure from the magistrates, the U.S. and others, Preval has not filled the Chief Justice position since it became vacant in February 2004. (Note: The previous Chief Justice, Boniface Alexandre, assumed the Haitian presidency in the wake of former president Aristide's departure in February 2004. End note.)

Minister of Justice Denis defends the Executive

¶4. (U) In a December 18 meeting with the Senate's Justice and Security Commission, which has been vocal in pressing for appointment of a Chief Justice and the creation of the CSPJ, Minister of Justice Paul Denis defended the Executive and argued that appointment of a Chief Justice is attended by a combination of difficulties. He explained that the government must also fill several other vacancies on the 12-member supreme court, to include members who have died, are too ill or old to serve, and who were originally appointed under irregular conditions in the transition period when parliament did not exist and who have never been properly ratified by Parliament. (Note: There are presently three vacancies on the Court. Of the nine remaining members, five judges were appointed during the transition period and have not been ratified by Parliament. The Executive has not specified who among the nine it considers "too ill or old" to serve. End note.) In addition, Denis explained, before the Executive can fill the vacancies, the Senate must propose three nominees for each vacancy to the President. To date, according to Denis, the Senate has proposed only six names, "which are not enough." As soon as the Supreme Court is complete and operational, "we will have the CSPJ," he said.

¶5. (U) Senator Youri Latortue, who attended the Justice and Security Commission meeting and who is the former president of the Commission, disagreed with Minister Denis' position. Latortue said that it was the same rationale offered by Denis' predecessor, Jean-Joseph Exume - namely, that the Chief Justice position must be filled at the same time as the other Supreme Court vacancies. Regardless, according to Latortue, the President has the authority to appoint a Chief Justice and "nothing has been done." Latortue stated that the lack of a Chief Justice, and therefore the absence of a functioning CSPJ, prevents the existence of an effective and independent judicial system.

Comment

¶6. (SBU) Despite ANAMAH's and the Senate Justice Commission's calls for appointment of a Chief Justice, Preval seems determined to move at his own pace. Preval has told us in the past that he was not happy with the nominees proposed by the Senate Commission, inferring that some of them were compromised by their relationship with drug traffickers. With Preval's dominant influence in the Senate, he may receive the additional nominees that he requires to fill the other vacancies on the Court, although Preval recently told the Ambassador that he would not appoint any new judges until after the new Parliament is seated in May, when he "hoped" to have a "more sizable" majority.

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